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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,629	03/01/2004	Ronald D. Latschaw	057635-0157	1339

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MILWAUKEE, WI 53202

EXAMINER
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ARK, DARREN W

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/790,629		LATSCHAW, RONALD D.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Darren W. Ark		3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-21 is/are pending in the application.
- 4a) Of the above claim(s) 13-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings were received on 5/9/2005. These drawings are approved by the Examiner.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tucker 4,171,595.

Tucker discloses a shell (6); a collapsible frame (5), the frame and shell forming a cockpit with upper and lower sections (see Fig. 1) and opposite sides (left and right or front and back); the frame including a first inflatable member (upright, vertically extending tube-type ribs 5) adapted to support the occupants torso at the upper section (a person leaning against the vertical ribs has his torso supported thereat) and a second inflatable member (lower tube-type ribs 5 extending horizontally along bottom or 16).

In regard to claim 3, Tucker discloses the second inflatable member (both lower horizontal ribs 5 and 16 have a space for user to place feet) creating a footbox.

In regard to claim 4, Tucker discloses the first inflatable member being wedge-shaped (where vertical rib 5 meets a horizontal rib 5 at the top portion of the blind to form a corner therebetween which is like a wedge shape).

In regard to claim 5, Tucker discloses the strap (others of each vertical pair of 5 besides the first member', each of vertical ribs 5 comprise pairs (one and other) of ribs since each of 5 are divided by seams 33; straps not being particularly claimed) extending along each interior surface of the sides of the cockpit to prevent the sides from sagging.

In regard to claim 6, Tucker discloses a gun rest (11, 12 extend between opposing sides of the cockpit).

In regard to claim 7, Tucker discloses a backpack assembly (8 allow the device to be attached to a backpack when not inflated', the limitation "backpack assembly" not particularly claimed) on a bottom surface of the shell.

In regard to claim 8, Tucker discloses at least one flap (9, 10) for covering the cockpit and being capable of being openable when the person moves from a supine position to a sitting position (person is capable of rising within the blind to a sitting position to open the flap).

In regard to claim 9, Tucker discloses the second inflatable member being U-shaped (three connected tubes 5 on the bottom form a generally U-shape in Fig. 1).

***Response to Arguments***

4. Applicant's arguments filed 5/9/2005 have been fully considered but they are not persuasive.

In regard to applicant's argument that "Tucker does not disclose a shell adapted to generally surround an occupant in a supine position...", the Examiner contends that although the term "supine position" may be defined as "lying down on his or her back" it does not take into account the exact manner in which the user lies on his or her back and also the various sizes of the users who would be capable of using the Tucker device. The fact that the structure of pan-tub (16) of the Tucker device could be used as a bath tub inherently means that a person could be capable of laying at least a portion of their back thereon to meet to definition of "supine position". Also the functional limitation "adapted to generally support an occupant in a supine position" could be met if the occupant were of small size such as a small child or infant. The recitation is merely a functional recitation that can be met by the Tucker patent so long as the Tucker device is capable of meeting this limitation. Although applicant has utilized graphic representations for purposes of comparing the prior art device of Tucker and the desired invention to show their differences in structure, such demonstration fails to distinguish how the language in applicant's claims overcome the device disclosed by the Tucker patent.

In regard to applicant's argument that "Tucker also does not disclose a second inflatable member...", the Examiner contends that there mere recitation of a second inflatable member does not further distinguish applicant's desired invention from the

Tucker patent. The ribs (5) and pan-tub (16) of Tucker are inflatable and represent a portion of the entire structure or frame of the device of Tucker and therefore meet the limitation. The fact that the ribs (5) and pan-tub (16) may represent internal structure of the Tucker device does not preclude it from being interpreted as part of a frame as broadly as applicant's claims recite. The frame has not been particularly claimed in a manner which differentiates it from the Tucker device and the second inflatable member could be interpreted as a second part of a single member since the second member has not been recited as representing a separate and distinct member from the first member so as to be inflatable and deflatable independently from the first member.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA